

Decree guiding on tax management for enterprises engaging in related party transactions

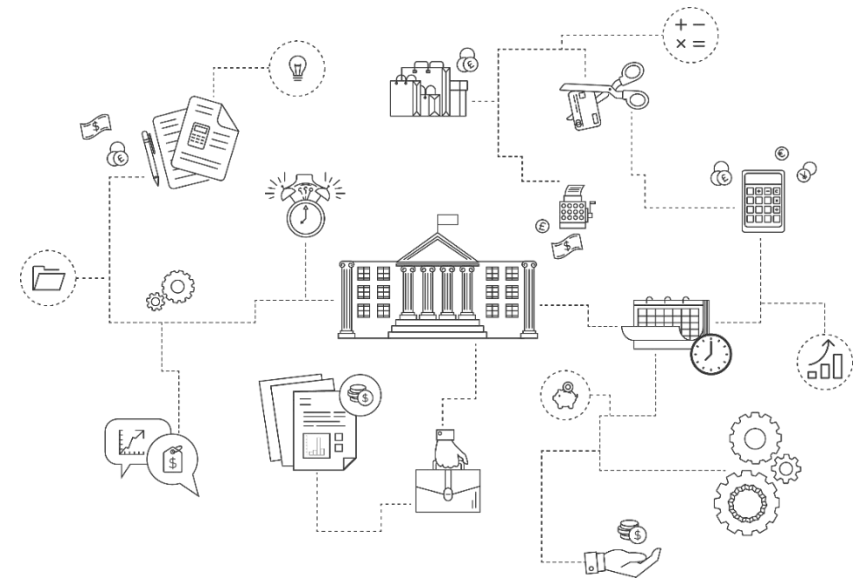
Tax spotlight - 01/2020

The Draft Decree



In December 2019, the Ministry of Finance has released the Draft Decree to amend and supplement Clause 3, Article 8 of Decree No. 20/2017 / ND-CP guiding on tax management for enterprises engaging in related party transactions (hereinafter referred to as “the Draft Decree”) and are seeking public comments from the affected entities.

The Draft Decree amends to regulations on determining deductible expense for interest expense for enterprises engaging in related party transactions. These Draft Decree is expected to directly affect goods or service production and business entities that are paying corporate income tax according to the declaration method and arising interest expenses with related parties according to Decree 20/2017/ND-CP.





The Draft Decree

Decree 20/2017/ND-CP

Method to determine total interest expense

Total interest expense is the net interest expense during the tax period of the taxpayer (interest expense is offset with interest income from deposits and loans).

There is no specific guidance on whether the total interest expense is the interest expense in the tax period of the taxpayer offset with interest income from deposits and loans.

Interest expenses

Interest expenses include loan interest expenses and the amounts similar to loan interests, including capitalized interest payments according to the provisions of the law on accounting and tax.

There is no specific guidance on whether interest expenses are included capitalized interest payments under the accounting and tax regulations.

Interest expense/ EBITDA ratio

The total deductible net interest expenses on determining taxable income do not exceed 30% of the EBITDA.

The total deductible interest expenses on determining taxable income do not exceed 20% of the EBITDA.

Guidance on EBITDA formula

Direct provision in the Draft Decree: EBITDA is calculated by total operating profit plus (+) net interest expense plus (+) depreciation expenses in the tax period of the taxpayer.

EBITDA is determined by the guiding formula for preparing of Related Party Transaction Disclosure Return (Form 01) in Circular 41/2017/ TT-BTC of the Ministry of Finance, specifically: EBITDA is calculated by total net profit from business activities plus (+) interest expenses plus (+) depreciation expenses in the tax period.

In case that EBITDA is equal to or less than 0

The net interest expense, which incurred in the tax period, is carried forward wholly and continuously to the deductible net interest expense of the subsequent 5 years.

There is no specific guidance on whether the net interest expense, which incurred in the tax period, is carried forward wholly and continuously to the deductible net interest expense of the subsequent 5 years.

For the points that there is no specific guidance in Decree 20, the judgments of the tax authorities in each specific case are relatively prudent.

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